APPEAL NO. 030794
FILED MAY 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 11, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he therefore did not have disability. The claimant appealed the hearing officer's injury and disability determinations and attached seven documents to his appeal. The respondent (carrier) responded, urging affirmance, and objecting to four of the documents attached to the claimant's appeal on the grounds that they were not offered or admitted at the hearing.

DECISION

Affirmed.

The claimant attached seven documents to his brief, four of which were not admitted at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. The claimant did not explain why he was unable to obtain these documents at an earlier time. We conclude that these attachments to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that their admission on remand would not have resulted in a different decision. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

On appeal, the claimant asserts that the hearing officer erred in determining that he was not in the course and scope of his employment at the time of the motor vehicle accident, which forms the basis of this claim. The claimant argues that he was in the course and scope of his employment because at the time of the accident, he was driving a vehicle supplied to him by the employer; the employer required him to bring home and care for the vehicle; he was on call; and he was taking a direct route home after his last job.

In this instance, the hearing officer determined that despite the fact that claimant was driving a vehicle provided by his employer at the time of the accident, he was not in the course and scope of his employment. In Texas Workers' Compensation Commission Appeal No. 950361, decided April 24, 1995, we noted, as follows:

> [E]ven a finding that transportation is furnished or controlled by an employer does not end the inquiry as to compensability. As explained by the court in Rose v. Odiorne, 795 S.W.2d 210 (Tex. App.-Austin 1990, writ denied), "[p]roof of this fact does not entitle appellant to compensation but only prevents his injury from being excluded from coverage simply

> because it was sustained while he was traveling to or from work. . . . Appellant still was required to prove that his injury satisfied the [statutory] requirements" that the injury was sustained in the course and scope of employment. *Id.* at 213-4.

See also Texas General Indemnity Co. v. Bottom, 365 S.W.2d 350, 353 (Tex. 1963) ("We have not said or held, however, that an employee is in the course of his employment whenever he rides in a vehicle owned, or is otherwise furnished transportation, by the employer."); Wausau Underwriters Ins. Co. v. Potter, 807 S.W.2d 419, 422 (Tex. App.- Beaumont 1991, writ denied) ("The mere furnishing of transportation by an employer does not automatically bring the employee within the protection of the *Texas Workers' Compensation Act*. [Citations omitted.] If this were not the law in this State, then each and every accident in a company vehicle, including those operated purely for personal reasons, would be compensable under the *Texas Workers' Compensation Act.*"); Texas Employers' Ins. Ass'n v. Byrd, 540 S.W.2d 460, 462 (Tex. Civ. App.-El Paso 1976, writ ref'd n.r.e.) ("We must not lose sight of the fact that workmen's compensation benefits are for injuries on the job--in the course and scope of employment--whether or not at the job site, and must be received while in the furtherance of the employer's affairs or business. The furnishing of transportation as a part of the contract of employment standing alone is not sufficient.").

In this instance, the claimant maintained that he was furthering the employer's business because he was on call in case of an emergency. Even if that fact is true, the Texas courts have held that it does not place the claimant in the course and scope of employment. In Loofbourow v. Texas Employers Ins. Ass'n, 489 S.W.2d 456 (Tex. Civ. App.-Waco 1972, writ ref'd n.r.e.), a nurse-anesthetist who was required by a hospital to be "on call" at particular times was involved in an accident on her way to the hospital. The claimant contended that the injury occurred while she was "at work," being paid for her duty, and acting in the course of her employment. The court held that the fact that the employee was "on call" and could be called at any time was not controlling, and where the employee is not required to perform any duty for the employer on the public street, the employee's injury while coming and going is not in the course of employment and is not compensable. Id. at 457; Aetna Life Insurance Co. v. Palmer, 286 S.W. 283, 284 (Tex. Civ. App.- Austin 1926, writ ref'd).

The hearing officer determined that at the time of his accident, the claimant was driving home from work and was not furthering the employer's affairs. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exits for us to reverse that determination, or the determinations that the claimant was not in the course and scope of his employment at the time of his accident and, thus, did not sustain a compensable injury, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability. The existence of a compensable injury is a necessary prerequisite to a finding of disability. Section 401.011(16).

Finally, the claimant complains about the quality of the representation he received from his attorney at the hearing. We are without the authority to consider such a challenge.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge